

ASSEMBLY BILL

No. 955

Introduced by Assembly Member Plescia

February 22, 2007

An act to add and repeal Sections 17053.8 and 23605 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 955, as introduced, Plescia. Taxation: tax credit program: qualified investors.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would authorize a credit against those taxes for each taxable year beginning on or after January 1, 2007, and before January 1, 2015, in an amount equal to specified percentage of the amount of a qualified investment, as defined, made by a qualified taxpayer, as defined, in a qualified small business, as defined, during the taxable year.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17053.8 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 17053.8. (a) For each taxable year beginning on or after
- 4 January 1, 2007, and before January 1, 2015, there shall be allowed
- 5 a credit, as determined in subdivision (b), against the amount of

1 “net tax,” as defined in Section 17039, to a qualified taxpayer who
2 makes a qualified investment in a qualified small business during
3 the taxable year.

4 (b) Subject to subdivision (c), the amount of credit shall equal
5 to either of the following amounts:

6 (1) In the case of an investment made in a qualified small
7 business that maintains its principal place of business in a rural
8 county of this state within the meaning of Section 40184 of the
9 Public Resources Code, or that is a bioscience enterprise, 12
10 percent of the amount of the qualified investment per year for the
11 first and second taxable years after the investment is made, and
12 11 percent of the amount of the qualified investment for the third
13 taxable year after the year in which the investment is made.

14 (2) In the case of an investment made in a qualified small
15 business other than a business described in paragraph (1), 10
16 percent of the amount of the qualified investment for each of the
17 three taxable years after the year in which the investment is made.

18 (c) (1) The total maximum amount of all qualified investments
19 made by a qualified taxpayer and its affiliates in any qualified
20 small business that is eligible for a tax credit pursuant to
21 subdivision (a) shall not exceed two hundred fifty thousand dollars
22 (\$250,000).

23 (2) The total maximum amount of qualified investments that
24 may be made by all qualified taxpayers in a single qualified small
25 business shall not exceed an aggregate of two million dollars
26 (\$2,000,000) for all taxable years.

27 (d) (1) Notwithstanding any other provision of this part, no
28 credit shall be allowed under this section unless the Department
29 of Corporations certifies that the investment described in
30 subdivision (a) qualifies for the credit under this section and
31 certifies the total amount of the credit allocated to the taxpayer
32 pursuant to this section.

33 (2) No credit shall be allowed by this section unless the taxpayer
34 provide satisfactory substantiation to, in the form and manner
35 requested by, the Franchise Tax Board that the investment is a
36 qualified investment, as defined in paragraph (4) of subdivision
37 (f).

38 (3) The aggregate amount of tax credits allowable to all qualified
39 taxpayers pursuant to this section and Section 23605 shall not

1 exceed twenty million dollars (\$20,000,000) for all taxable years
2 beginning on or after January 1, 2007, and before January 1, 2015.

3 (e) The Department of Corporations shall do all of the following:

4 (1) Accept and evaluate applications, within 90 days after
5 receiving the application, for certification from small businesses
6 and issue certificates that the applicant is a small business that is
7 qualified to receive qualified investments. To receive a certificate,
8 an applicant shall meet the specific requirements, to be established
9 by the Department of Corporations, to be a qualified small business
10 for this state program, as defined in paragraph (6) of subdivision

11 (f). The certificate may be issued for a specified period of time,
12 and may include reasonable conditions to effectuate the intent of
13 this section. The Director of the Department of Corporations may
14 suspend or revoke a certification, after affording the small business
15 notice and the opportunity to be heard, if the director finds that
16 the business no longer meets the requirement for certification. If
17 the certification is revoked or expires, subsequent investments in
18 the business do not qualify for a tax credit pursuant to this section.
19 All tax credits that are issued before any expiration or revocation
20 of the certification shall remain valid. Any application for a tax
21 credit shall not be denied on the basis of the expiration or
22 revocation of the certification if the investment was made before
23 the date of the expiration or revocation.

24 (2) Accept and evaluate applications for certification from any
25 taxpayer and issue certificates to qualified taxpayers in an aggregate
26 amount that shall not exceed the limit specified in subdivision (b).
27 The certificate shall include the amount eligible to be made as an
28 investment that qualifies for the credit and the total amount of the
29 credit to which the taxpayer is entitled for the taxable year.
30 Applications for tax credits shall be accepted and evaluated
31 throughout the year, and certificates shall be issued in the order
32 that complete applications are received. If the aggregate amount
33 of tax credit applications exceeds the amount of tax credits
34 available, tax credits shall be approved for qualifying investments
35 on a first-come-first-served basis, as determined by the order in
36 which complete applications are received. All applications received
37 on the same business day are deemed to be received at the same
38 time. If the aggregate amount of tax credit applications received
39 on a single business day exceeds the amount of tax credits

1 available, tax credits shall be approved for qualifying investments
2 received on that day on a pro rata basis.

3 (3) Provide to the Franchise Tax Board, in a form or manner
4 agreed upon by the Franchise Tax Board, all necessary information
5 required to administer this section and an annual listing of the
6 taxpayers who were issued certificates, their respective tax
7 identification numbers, the amount of the qualified investment
8 made by each taxpayer, and the total amount of all qualified
9 investments. If the Department of Corporations subsequently
10 discovers that an applicant who received a tax credit certificate
11 misrepresented information on the application, the Department of
12 Corporations shall immediately notify the Franchise Tax Board
13 and provide the board all information that relates to that applicant.
14 If the Franchise Tax Board determines that there has been a
15 misrepresentation on the application, the board shall deny the credit
16 if the misrepresentation relates to whether the applicant was a
17 qualified investor or made a qualified investment.

18 (f) For purposes of this section, all of the following definitions
19 apply:

20 (1) "Affiliate" means any person or entity that controls, that is
21 controlled by, or that is under common control with another person
22 or entity. For the purposes of this paragraph, "control" means the
23 power to determine the policies of an entity whether through
24 ownership of voting securities, by contract or otherwise.

25 (2) "Asset" means any owned property that has value including
26 financial assets and physical assets. Intellectual property shall not
27 be included when determining total assets.

28 (3) "Bioscience enterprise" means a business whose activity is
29 related to bioscience, as determined by the Department of
30 Corporations, or any corporation, partnership, limited liability
31 company, or other business entity that is primarily engaged in a
32 business that conducts research, development, manufacture,
33 marketing, sale and licensing of products, services, and solutions
34 relating to either of the following:

35 (A) Medical, pharmaceutical, nutraceutical, bioengineering,
36 biomechanical, bioinformatics, or other life-science based
37 applications.

38 (B) Applications of modern biological, bioengineering,
39 biomechanical, or bioinformatics technologies in the fields of

1 human, plant or animal health, agriculture, defense, homeland
2 security, or the environment.

3 (4) "Qualified investment" means an investment in an equity
4 security that meets all of the following requirements:

5 (A) The equity security shall be common stock, preferred stock,
6 an interest in a partnership or limited liability company, a security
7 that is convertible into an equity security or other equity security
8 as determined by the Department of Corporations.

9 (B) The investment shall be at least twenty-five thousand dollars
10 (\$25,000).

11 (C) The qualified investor and its affiliates do not hold, of record
12 or beneficially, immediately before making an investment, equity
13 securities possessing more than 30 percent of the total voting power
14 of all equity securities of the qualified small business.

15 (5) "Qualified taxpayer" means a taxpayer that satisfies all of
16 the following requirements:

17 (A) Makes a qualified investment in a qualified small business.

18 (B) Files an application with the Department of Corporations,
19 in the form and manner prescribed by the department, within 30
20 days after making a qualified investment.

21 (C) Provides written authorization to the Department of
22 Corporations designating the department as eligible to receive tax
23 information from the Franchise Tax Board for the purpose of
24 determining if any misrepresentations exist on the application. The
25 authorization shall limit disclosure to income tax information for
26 the latest two years for which tax returns were filed with the
27 Franchise Tax Board preceding the date the application was filed,
28 and for all taxable years in which a return was not filed as of the
29 date of the application.

30 (D) Files a return claiming the tax credit with the Franchise Tax
31 Board, in the form and manner prescribed by the board, by the due
32 date of the return, including extensions, for the taxable year in
33 which the credit is available, and attaches to that return a copy of
34 the Department of Corporations certificate, as provided for in
35 paragraph (2) of subdivision (e).

36 (6) "Qualified small business" means a corporation, limited
37 liability company, partnership, or other business entity, other than
38 a sole proprietorship, that meets all of the following requirements:

39 (A) Maintains at least a portion of its operations at an office or
40 manufacturing or research facility located in this state.

1 (B) Has at least two principal full-time equivalent employees
2 who are residents in this state. For the purposes of this subdivision,
3 “principal” means a person whose sole responsibility is not
4 administrative.

5 (C) Does not have a principal business involving any of the
6 following:

7 (i) Sales or distribution of retail goods or food or restaurant
8 services.

9 (ii) Development, sale, leasing, rental or operation of or
10 investment in, real estate.

11 (iii) Providing professional services, except for professional
12 services for hardware or software licensed or sold by the provider
13 of those services.

14 (iv) Providing health care services to patients, except for services
15 provided in connection with research, development, clinical trials,
16 and marketing activities by bioscience enterprises.

17 (v) Providing banking, brokerage, insurance, or other financial
18 or investment services.

19 (vi) Providing personal services.

20 (vii) Operating mining, forestry, and other natural resource
21 exploitation or extraction businesses, except for research and
22 development in these businesses.

23 (viii) Agricultural operations, except for research and
24 development in these businesses.

25 (ix) Operating an investment company or fund.

26 (x) Any other business activity that the Department of
27 Corporations determines by rule to be unsuited to fulfill the
28 purposes of this section.

29 (D) Does not engage in any activities that involve human cloning
30 or embryonic stem cell research.

31 (E) Has total assets not exceeding two million dollars
32 (\$2,000,000), excluding any investment made under this section.

33 (g) Qualified individual taxpayers who are coowners of a
34 business, including partners in a partnership, may each claim,
35 based on the ownership interests, their individual, pro rata amounts
36 of the credit allowed and claimed by the business or partnership,
37 pursuant to this section. The total amount of the credits may not
38 exceed the amount that would have been allowed to a sole owner.

39 (h) The basis of a qualified investment with respect to which
40 the taxpayer has claimed a credit pursuant to this section shall be

1 reduced by the amount of the credit claimed with respect to that
2 investment.

3 (i) In the case where the credit allowed by this section exceeds
4 the “net tax,” the excess may be carried over to reduce the “net
5 tax” for the next three taxable years, or until the credit has been
6 exhausted, whichever occurs first.

7 (j) The Franchise Tax Board shall, as requested by the
8 Department of Corporations, advise and assist in the administration
9 of this section and shall issue rules and regulations to implement
10 this section.

11 (k) The Department of Corporations may not authorize the tax
12 credit allowed by this section after June 30, 2011.

13 (l) This section shall remain in effect only until December 1,
14 2014, and as of that date is repealed.

15 SEC. 2. Section 23805 is added to the Revenue and Taxation
16 Code, to read:

17 23805. (a) For each taxable year beginning on or after January
18 1, 2007, and before January 1, 2015, there shall be allowed a credit,
19 as determined in subdivision (b), against the amount of “tax,” as
20 defined in Section 23036, to a qualified taxpayer who makes a
21 qualified investment in a qualified small business during the taxable
22 year.

23 (b) Subject to subdivision (c), the amount of credit shall equal
24 to either of the following amounts:

25 (1) In the case of an investment in a qualified small business
26 that maintains its principal place of business in a rural county of
27 this state, within the meaning of Section 40184 of the Public
28 Resources Code, or that is a bioscience enterprise, 12 percent of
29 the amount of the qualified investment per year for the first and
30 second taxable years after the investment is made, and 11 percent
31 of the amount of the qualified investment for the third taxable year
32 after the year in which the investment is made.

33 (2) In the case of an investment made in a qualified small
34 business other than a business described in paragraph (1), 10
35 percent of the amount of the qualified investment for each of the
36 three taxable years after the year in which the investment is made.

37 (c) (1) The total maximum amount of all qualified investments
38 made by a qualified taxpayer and its affiliates in any qualified
39 small business that is eligible for a tax credit pursuant to

1 subdivision (a) shall not exceed two hundred fifty thousand dollars
2 (\$250,000).

3 (2) The total maximum amount of qualified investments that
4 may be made by all qualified taxpayers in a single qualified small
5 business shall not exceed an aggregate of two million dollars
6 (\$2,000,000) for all taxable years.

7 (d) (1) Notwithstanding any other provision of this part, no
8 credit shall be allowed under this section unless the Department
9 of Corporations certifies that the investment described in
10 subdivision (a) qualifies for the credit under this section and
11 certifies the total amount of the credit allocated to the taxpayer
12 pursuant to this section.

13 (2) No credit shall be allowed by this section unless the taxpayer
14 provide satisfactory substantiation to, in the form and manner
15 requested by, the Franchise Tax Board that the investment is a
16 qualified investment, as defined in paragraph (4) of subdivision
17 (f).

18 (3) The aggregate amount of tax credits allowable to all qualified
19 taxpayers pursuant to this section and Section 23605 shall not
20 exceed twenty million dollars (\$20,000,000) for all taxable years
21 beginning on or after January 1, 2007, and before January 1, 2015.

22 (e) The Department of Corporations shall do all of the following:

23 (1) Accept and evaluate applications, within 90 days after
24 receiving the application, for certification from small businesses
25 and issue certificates that the applicant is a small business that is
26 qualified to receive qualified investments. To receive a certificate,
27 an applicant shall meet the specific requirements, to be established
28 by the Department of Corporations, to be a qualified small business
29 for this state program, as defined in paragraph (6) of subdivision
30 (f). The certificate may be issued for a specified period of time,
31 and may include reasonable conditions to effectuate the intent of
32 this section. The Director of the Department of Corporations may
33 suspend or revoke a certification, after affording the small business
34 notice and the opportunity to be heard, if the director finds that
35 the business no longer meets the requirement for certification. If
36 the certification is revoked or expires, subsequent investments in
37 the business do not qualify for a tax credit pursuant to this section.
38 All tax credits that are issued before any expiration or revocation
39 of the certification shall remain valid. Any application for a tax
40 credit shall not be denied on the basis of the expiration or

1 revocation of the certification if the investment was made before
2 the date of the expiration or revocation.

3 (2) Accept and evaluate applications for certification from any
4 taxpayer and issue certificates to qualified taxpayers in an aggregate
5 amount that shall not exceed the limit specified in subdivision (b).
6 The certificate shall include the amount eligible to be made as an
7 investment that qualifies for the credit and the total amount of the
8 credit to which the taxpayer is entitled for the taxable year.
9 Applications for tax credits shall be accepted and evaluated
10 throughout the year, and certificates shall be issued in the order
11 that complete applications are received. If the aggregate amount
12 of tax credit applications exceeds the amount of tax credits
13 available, tax credits shall be approved for qualifying investments
14 on a first-come-first-served basis, as determined by the order in
15 which complete applications are received. All applications received
16 on the same business day are deemed to be received at the same
17 time. If the aggregate amount of tax credit applications received
18 on a single business day exceeds the amount of tax credits
19 available, tax credits shall be approved for qualifying investments
20 received on that day on a pro rata basis.

21 (3) Provide to the Franchise Tax Board, in a form or manner
22 agreed upon by the Franchise Tax Board, all necessary information
23 required to administer this section and an annual listing of the
24 taxpayers who were issued certificates, their respective tax
25 identification numbers, the amount of the qualified investment
26 made by each taxpayer, and the total amount of all qualified
27 investments. If the Department of Corporations subsequently
28 discovers that an applicant who received a tax credit certificate
29 misrepresented information on the application, the Department of
30 Corporations shall immediately notify the Franchise Tax Board
31 and provide the board all information that relates to that applicant.
32 If the Franchise Tax Board determines that there has been a
33 misrepresentation on the application, the board shall deny the credit
34 if the misrepresentation relates to whether the applicant was a
35 qualified investor or made a qualified investment.

36 (f) For purposes of this section, all of the following definitions
37 apply:

38 (1) "Affiliate" means any person or entity that controls, that is
39 controlled by, or that is under common control with another person
40 or entity. For the purposes of this paragraph, "control" means the

1 power to determine the policies of an entity whether through
2 ownership of voting securities, by contract or otherwise.

3 (2) “Asset” means any owned property that has value including
4 financial assets and physical assets. Intellectual property shall not
5 be included when determining total assets.

6 (3) “Bioscience enterprise” means a business whose activity is
7 related to bioscience, as determined by the Department of
8 Corporations, or any corporation, partnership, limited liability
9 company, or other business entity that is primarily engaged in a
10 business that conducts research, development, manufacture,
11 marketing, sale and licensing of products, services, and solutions
12 relating to either of the following:

13 (A) Medical, pharmaceutical, nutraceutical, bioengineering,
14 biomechanical, bioinformatics, or other life-science based
15 applications.

16 (B) Applications of modern biological, bioengineering,
17 biomechanical, or bioinformatics technologies in the fields of
18 human, plant or animal health, agriculture, defense, homeland
19 security, or the environment.

20 (4) “Qualified investment” means an investment in an equity
21 security that meets all of the following requirements:

22 (A) The equity security shall be common stock, preferred stock,
23 an interest in a partnership or limited liability company, a security
24 that is convertible into an equity security or other equity security
25 as determined by the Department of Corporations.

26 (B) The investment shall be at least twenty-five thousand dollars
27 (\$25,000).

28 (C) The qualified investor and its affiliates do not hold, of record
29 or beneficially, immediately before making an investment, equity
30 securities possessing more than 30 percent of the total voting power
31 of all equity securities of the qualified small business.

32 (5) “Qualified taxpayer” means a taxpayer, other than a “C”
33 corporation, as described in Subchapter C of Chapter 1 of Subtitle
34 A of the Internal Revenue Code, that satisfies all of the following
35 requirements:

36 (A) Makes a qualified investment in a qualified small business.

37 (B) Files an application with the Department of Corporations,
38 in the form and manner prescribed by the department, within 30
39 days after making a qualified investment.

1 (C) Provides written authorization to the Department of
2 Corporations designating the department as eligible to receive tax
3 information from the Franchise Tax Board for the purpose of
4 determining if any misrepresentations exist on the application. The
5 authorization shall limit disclosure to income tax information for
6 the latest two years for which tax returns were filed with the
7 Franchise Tax Board preceding the date the application was filed,
8 and for all taxable years in which a return was not filed as of the
9 date of the application.

10 (D) Files a return claiming the tax credit with the Franchise Tax
11 Board, in the form and manner prescribed by the board, by the due
12 date of the return, including extensions, for the taxable year in
13 which the credit is available, and attaches to that return a copy of
14 the Department of Corporations certificate, as provided for in
15 paragraph (2) of subdivision (e).

16 (6) “Qualified small business” means a corporation, limited
17 liability company, partnership, or other business entity, other than
18 a sole proprietorship, that meets all of the following requirements:

19 (A) Maintains at least a portion of its operations at an office or
20 manufacturing or research facility located in this state.

21 (B) Has at least two principal full-time equivalent employees
22 who are residents in this state. For the purposes of this subdivision,
23 “principal” means a person whose sole responsibility is not
24 administrative.

25 (C) Does not have a principal business involving any of the
26 following:

27 (i) Sales or distribution of retail goods or food or restaurant
28 services.

29 (ii) Development, sale, leasing, rental, or operation of or
30 investment in, real estate.

31 (iii) Providing professional services, except for professional
32 services, for hardware or software licensed or sold by the provider
33 of those services.

34 (iv) Providing health care services to patients, except for services
35 provided in connection with research, development, clinical trials,
36 and marketing activities by bioscience enterprises.

37 (v) Providing banking, brokerage, insurance, or other financial
38 or investment services.

39 (vi) Providing personal services.

(vii) Operating mining, forestry, and other natural resource exploitation or extraction businesses, except for research and development in these businesses.

(viii) Agricultural operations, except for research and development in these businesses.

(ix) Operating an investment company or fund.

(x) Any other business activity that the Department of Corporations determines by rule to be unsuited to fulfill the purposes of this section.

(D) Does not engage in any activities that involve human cloning or embryonic stem cell research.

(E) Has total assets not exceeding two million dollars (\$2,000,000), excluding any investment made under this section.

(g) Qualified individual taxpayers who are shareholders of an “S” corporation or members of a limited liability company, may each claim, based on the ownership interests, their individual pro rata amounts of the credit allowed and claimed by the limited liability company or “S” corporation pursuant to this section. The total amount of the credits may not exceed the amount that would have been allowed to the business entity.

(h) The basis of a qualified investment with respect to which the taxpayer has claimed a credit pursuant to this section shall be reduced by the amount of the credit claimed with respect to that investment.

(i) In the case where the credit allowed by this section exceeds the “tax,” the excess may be carried over to reduce the “tax” for the next three taxable years, or until the credit has been exhausted, whichever occurs first.

(j) The Franchise Tax Board shall, as requested by the Department of Corporations, advise and assist in the administration of this section and shall issue rules and regulations to implement this section.

(k) The Department of Corporations may not authorize the tax credit allowed by this section after June 30, 2011.

(l) This section shall remain in effect only until December 1, 2014, and as of that date is repealed.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

O